

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL A GRASSMUEK, Court-
Appointed Receiver,

Plaintiff,

v.

ZHOU YAN, an individual, and DOES 1
THROUGH 10, inclusive,

Defendants.

No. 2:17-cv-00794-JLR

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced

1 or otherwise exchanged to the extent such items have not already been made public in the court
2 record; confidential personal financial information; customer and/or investor lists which set forth
3 full names; immigration broker agreements that contain a confidentiality provision, and bank
4 statements for accounts held by individuals and/or sole proprietorships or its foreign equivalent.

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential material (as defined
7 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
8 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations,
9 or presentations by parties or their counsel that might reveal confidential material.

10 However, the protections conferred by this agreement do not cover information that is in the
11 public domain or becomes part of the public domain through trial or otherwise.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
14 produced by another party or by a non-party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
16 categories of persons and under the conditions described in this agreement. Confidential material
17 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
18 that access is limited to the persons authorized under this agreement.

19 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
20 by the court or permitted in writing by the designating party, a receiving party may disclose any
21 confidential material only to:

22 (a) the receiving party's counsel of record in this action, as well as employees of
23 counsel to whom it is reasonably necessary to disclose the information for this litigation;

24 (b) the officers, directors, and employees (including in house counsel) of the
25 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
26 agree that a particular document or material produced is for Attorney's Eyes Only and is so

1 designated;

2 (c) experts and consultants to whom disclosure is reasonably necessary for this
3 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the duplication of
6 confidential material, provided that counsel for the party retaining the copy or imaging service
7 instructs the service not to disclose any confidential material to third parties and to immediately
8 return all originals and copies of any confidential material;

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
11 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
12 transcribed deposition testimony or exhibits to depositions that reveal confidential material must be
13 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
14 this agreement;

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information.

17 4.3 Filing Confidential Material. Before filing confidential material or discussing or
18 referencing such material in court filings, the filing party shall confer with the designating party to
19 determine whether the designating party will remove the confidential designation, whether the
20 document can be redacted, or whether a motion to seal or stipulation and proposed order is
21 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
22 that will be applied when a party seeks permission from the court to file material under seal.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
25 non-party that designates information or items for protection under this agreement must take care to
26 limit any such designation to specific material that qualifies under the appropriate standards. The

1 designating party must designate for protection only those parts of material, documents, items, or
2 oral or written communications that qualify, so that other portions of the material, documents, items,
3 or communications for which protection is not warranted are not swept unjustifiably within the
4 ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
6 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
7 encumber or delay the case development process or to impose unnecessary expenses and burdens
8 on other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated for
10 protection do not qualify for protection, the designating party must promptly notify all other parties
11 that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
13 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
14 disclosure or discovery material that qualifies for protection under this agreement must be clearly
15 so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (e.g., paper or electronic documents and
17 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
18 the designating party must affix the word "CONFIDENTIAL" to each page that contains
19 confidential material. If only a portion or portions of the material on a page qualifies for protection,
20 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
21 markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
23 any participating non-parties must identify on the record, during the deposition or other pretrial
24 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
25 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
26 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or

1 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
2 at trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a prominent place on
4 the exterior of the container or containers in which the information or item is stored the word
5 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the
6 producing party, to the extent practicable, shall identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the designating party's
9 right to secure protection under this agreement for such material. Upon timely correction of a
10 designation, the receiving party must make reasonable efforts to ensure that the material is treated
11 in accordance with the provisions of this agreement.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
16 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
20 regarding confidential designations without court involvement. Any motion regarding confidential
21 designations or for a protective order must include a certification, in the motion or in a declaration
22 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
23 affected parties in an effort to resolve the dispute without court action. The certification must list
24 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
25 to-face meeting or a telephone conference.

26 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court

1 intervention, the designating party may file and serve a motion to retain confidentiality under Local
2 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion
3 in any such motion shall be on the designating party. Frivolous challenges, and those made for an
4 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
5 expose the challenging party to sanctions. All parties shall continue to maintain the material in
6 question as confidential until the court rules on the challenge.

7 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION

9 If a party is served with a subpoena or a court order issued in other litigation that compels
10 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
11 must:

12 (a) promptly notify the designating party in writing and include a copy of the
13 subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to
15 issue in the other litigation that some or all of the material covered by the subpoena or order is
16 subject to this agreement. Such notification shall include a copy of this agreement; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by
18 the designating party whose confidential material may be affected.

19 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
21 material to any person or in any circumstance not authorized under this agreement, the receiving
22 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
23 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
24 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
25 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
26 Bound" that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently produced
4 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
5 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
6 modify whatever procedure may be established in an e-discovery order or agreement that provides
7 for production without prior privilege review. The parties agree to the entry of a non-waiver order
8 under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving party
11 must return all confidential material to the producing party, including all copies, extracts and
12 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

13 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
14 documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition
15 and trial exhibits, expert reports, attorney work product, and consultant and expert work product,
16 even if such materials contain confidential material.

17 The confidentiality obligations imposed by this agreement shall remain in effect until a
18 designating party agrees otherwise in writing or a court orders otherwise.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED: October 13, 2017

HACKER & WILLIG, INC., P.S.

21 /s/ Elizabeth H. Shea

22 Elizabeth H. Shea, WSBA #27189

23 eshea@hackerwillig.com

24 /s/ Charles L. Butler, III

25 Charles L. Butler, III, WSBA #36893

26 charlie@hackerwillig.com

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DATED: October 13, 2017

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MICHAEL A. GRASSMUECK

[The Order of the Court is set forth on the following page.]

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
4 in any other court, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

7 DATED: 13 October 2017


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9 James L. Robart
10 United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued
by the United States District Court for the Western District of Washington on [date] in the case of
_____ [insert formal name of the case and the number and initials assigned to it
by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western
District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order,
even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2017, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

DATED this 13th day of October, 2017.

Respectfully submitted,

HACKER & WILLIG, INC., P.S.

/s/ Charles L. Butler, III

Charles L. Butler, III, WSBA #36893